HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

No. 1877 (M/S) of 2001

Om Krishna

Vs

Presiding Officer Lower Court (I) U.P. Meerut.

Approved for reporting

Not approved for reporting

Date of decision: 13.06.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1877 (MS) OF 2001

(Old No. 38610 of 1999)

Om Krishna,
S/o Shiv Ratan Das,
R/o Khanjarpur, P.O. Roorkee,
District-Haridwar. .....Petitioner.

Versus

1. Presiding Officer, Labour Court (I) U.P., Meerut.
2. Roorkee University, Roorkee, through its Registrar.

.....Respondents.

Dated: 13.06.2006

Hon'ble Rajesh Tandon, J.

Heard Sri P.C. Bisht, Advocate for the petitioner, Sri Vipul Sharma, Advocate for the respondent no.2 and Standing Counsel for the respondent no.1.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 20.11.1998.

Briefly stated, a reference was made to the following effect before the labour Court:-

"क्या सेवायोजकों द्वारा अपने श्रमिक श्री ओम कृष्ण पुत्र श्री प्रिव रतन दास की सेवायें दिनांक 22.6.92 को समाप्त किया जाना उचित तथा/अथवा वैधानिक है? यदि नहीं तो संबंधित श्रमिक किस हितलाभ / आनुतोष पाने का अधिकारी है तथा अन्य किस विवरण व तिथि सहित ?"

Both the parties have filed their written statements. According to the case of the petitioner, he was appointed on the post of helper in Computer Centre of Roorkee University and is continuing since 1979 and his service was illegally terminated on 27th June, 1992 when in point of fact, he has

already worked for more than 240 days in a calendar year. On behalf of the Roorkee University, Sri Vipul Sharma has submitted that the petitioner was initially appointed in the year 1990 and lastly from 01.05.1992 up to 30th May, 1992 and the service of the petitioner came to an end by efflux of time and it was for a short period, which had already expired and as such the petitioner has no cause of action at the moment.

The presiding officer after hearing both the parties rejected the claim of the petitioner, hence the present writ petition has been filed.

A counter affidavit has been filed by the Roorkee University, where he has annexed the written statement submitted on behalf of the Registrar. In paragraph 11, it has been stated as under:-

"11. That as pwer need the Computer Centre, University of Roorkee, Roorkee, engaged Sri Om Krishan on daily wages as Muster Roll after keeping sanctions for fixed durations.

12. That the University of Roorkee, Roorkee never engaged Sri Om Krishan as a permanent hand. Therefore, he has no right to claim work.

14. That the Registrar, Univeristy of Roorkee, Roorkee never engaged and/or appointed Sri Om Krishan on any post, therefore, question of terminating his services by the Registrar. Question of terminating his services by the Registrar on any date and also on 22.6.1992 (afternoon does not arise as alleged in the order of reference. Therefore, reference is bad in law and also impleadment of Registrar is illegal and not maintainable."

A perusal of the order passed by the presiding Officer Labour Court shows that the petitioner was appointed on a sum of Rs. 26/- per day and the status of the petitioner was of

a daily wager employee, he cannot claim equal treatment to the regular employee.

Petitioner has submitted that there is a muster roll entry also in his favour.

Counsel for the petitioner has referred the judgment of ***U.P. State Sugar Corporation Ltd. Vs. Om Prakash Upadhyay (2002) 10 SCC 89,*** where it has been observed as under:-

"5. The law is settled that under the Central Act every case of retrenchment would not include a case of contractual termination which came to be introduced under the Central Act by amending Act 49 of 1984 which purports to exclude from the ambit of the definition of "retrenchment" inter alia (i) termination of service of a workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry, or (ii) termination of the contract of employment in terms of a stipulation contained in the contract of employment in that behalf. Such a case is not available under the U.P. Industrial Disputes Act. If the U.P. Industrial Act covers the present case then termination of the services of the respondent would certainly result in retrenchment while it is not so under the Central Industrial Disputes Act in view of the exceptional clauses referred to above. While the former situation results in retrenchment, the latter situation does not amount to retrenchment if the same case would arise under the State Industrial Disputes Act. Thus operation of the two enactments would bring to the forefront the obvious repugnancy between them. In such a case as to how the question is to be resolved needs to be considered in the present case."

In ***Nagar Mahaplika Vs. State of U.P. reported in 2006 AIR SCW 2497,*** it has been observed as under:-

"The Respondents although purported to have been appointed as apprentices, were appointed as clerks on daily wages in the Assessment Department. Evidently, the provisions of the Apprentice Act, 1961 have also not been followed. The officers appeared to be absolutely ignorant of the provisions of the said Act. They even do not known how offers of appointment should be issued."

Both the parties have agreed that let the matter be examined in the light of the judgment of the Apex Court passed in ***U.P. State Sugar Corporation Ltd. Vs. Om prakash Upadhyay (2002) 10 SCC 89*** within a period of four months from the date of production of the certified copy of the order.

In view of the above, the Presiding Officer is directed to examine as to whether the benefit can be extended to the petitioner and further whether there is any possibility of regularization in his favour. The labour Court shall decide the matter within a period of four months form the date of production of the certified copy of the order.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J)

13.06.2006
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